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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/852,940	05/10/2001	Debra Sue Caswell	8082M	5827

27752 7590 10/22/2004

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CINCINNATI, OH 45224

EXAMINER

HARDEE, JOHN R

ART UNIT	PAPER NUMBER
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1751

DATE MAILED: 10/22/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/852,940

Applicant(s)

CASWELL ET AL.

Examiner

John R. Hardee

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-15, 17, 18 and 20-64 is/are pending in the application.
- 4a) Of the above claim(s) 2, 5-15, 25-54 and 56-64 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 3, 4, 17, 18, 20-24 and 55 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_.

### **DETAILED ACTION**

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on September 28, 2004 has been entered.

### ***Election/Restrictions***

2. Applicant is reminded that a species election remains in effect. Claims 2, 5-15, 25-54 and 56-64 remain withdrawn from consideration by the examiner as being drawn to embodiments non-elected with traverse.

### ***Claim Objections***

3. Claim 21 is objected to because of the following informalities: The claim ends in two periods. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 20 and 21 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which

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applicant regards as the invention. These claims further modify a phase stabilizer which was deleted from the independent claim. It is not clear whether these claims should be of the "further comprising" variety, or if they should have been cancelled.

### ***Claim Rejections - 35 USC § 102***

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 1, 3, 4, 17, 18, 22-24 and 55 are rejected under 35 U.S.C. 102(b) as being anticipated by Wahl et al., US 5,759,990. See Examples 21 and 22. Phase stability is disclosed as being met in the passage below the examples when the exemplified TMPD:CHDM ratio is met. As the chemical limitations have been met, the flash point, viscosity and phase transition limitations are assumed to be met, absent evidence to the contrary. Dilution in rinse water and application are the intended purposes of the compositions.

### ***Claim Rejections - 35 USC § 103***

8. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

9. Claims 1, 3, 4, 17, 18 and 22-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wahl et al., US 5,759,990. See the 102(b) rejection above. The

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reference discloses fabric compositions comprising biodegradable diesters with a substantial level of polyunsaturation in the hydrophobic chains. The compositions may be aqueous dispersions or clear compositions (abstract). The actives are present at about 15% to about 50%, with an IV of about 60 to about 140 (col. 3, lines 33+). The compositions contain water (col. 8, lines 22-23). As the chemical limitations have been met, the flash point, viscosity and phase transition limitations are assumed to be met, absent evidence to the contrary. Alternatively, it would be obvious to manipulate the viscosity and flash point in the course of dilution within the disclosed ranges of water, non-aqueous solvent and principal solvent contents. Dilution in rinse water and application are the intended purposes of the compositions. The compositions may comprise less than about 40% of TMPD and CHDM in a ratio of about 80:20 to about 50:50 (col. 9, lines 19+). Ethoxylated fatty alcohols and amides may be added (col. 25, lines 48+). The claims are obvious because they are anticipated.

Claims 1, 3, 4, 17, 18 and 22-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over WO 98/52907. The reference discloses biodegradable fabric compositions. The compositions may be aqueous dispersions or clear compositions (abstract). Preferred softeners are disclosed at p. 5, line 28+, and the parent fatty acids have an IV of 50-130. CHDM is a preferred co-solvent (p. 17, lines 15-16). The actives may be present in a premix at 55-85% (p. 32, lines 9+). Typical viscosities are less than 1000 cps. Premixes do not contain water until subsequently diluted. As the chemical limitations have been met, the flash point, viscosity and phase transition limitations are assumed to be met, absent evidence to the contrary. Alternatively, it would be obvious

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to manipulate the viscosity and flash point in the course of dilution within the disclosed ranges of water, non-aqueous solvent and principal solvent contents. Dilution in rinse water and application are the intended purposes of the compositions. Ethoxylated fatty alcohols and amides may be added (p. 21, lines 3+). This reference differs from the claimed subject matter in that it does not disclose a composition which reads on applicant's claims with sufficient specificity to constitute anticipation.

It would have been obvious at the time the invention was made to make such a composition, because this reference teaches that all of the ingredients recited by applicants are suitable for inclusion in a surfactant composition. The person of ordinary skill in the surfactant art would expect the recited compositions to have properties similar to those compositions which are exemplified, absent a showing to the contrary.

10. In the case where the claimed ranges overlap or lie inside ranges disclosed by the prior art, a *prima facie* case of obviousness exists. *In re Wertheim*, 541 F.2d 257, 191 USPQ 90 (CCPA 1976); *In re Woodruff*, 919 F.2d 1575, 16 USPQ2d 1934 (Fed Cir. 1990).

11. Any prior art made of record and not relied upon is of interest and is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to the examiner, Dr. John R. Hardee, whose telephone number is (571) 272-1318. The examiner can normally be reached on Monday through Friday from 8:00 until 4:30. In the event that the examiner is not available, his

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supervisor, Dr. Yogendra Gupta, may be reached at (571) 272-1316.

The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read "J. Hardee", is positioned above the printed name.

John R. Hardee  
Primary Examiner  
October 6, 2004